(6)

IN THE HIGH COURT OF JUDICATURE MADHYA PRADESH AT JABALPUR

Writ Petition No. 3377 of 1998

Petitioners: (1) Jayant Bohidar, aged 38 years, son of Shri Sharad Prasad Bohidar, Editor, Nav Samajvadi Sandesh and Activist, Bharat Jan Andolan, resident of Bohidar Para, Raigarh, District Raigarh 496 001 (M.P.)

(2) Ram Kumar Agarwal, aged 76 years, son of late Laxman Das Agarwal, former M.L.A., Convenor Kelo Bachao Sangarsh Samiti, resident of Dani Para, Raigarh, District Raigarh 496 001 (M.P.)

(3) Nandan Gupta, aged 50 years, sonof late Keshav Deo Gupta, President, Loktantrik Samajvadi Party (Raigarh District), resident of Himalaya Refrigeration, Boir Dadar, Raigarh, District Raigarh 496 001 (M.P.).

(4) Gajanand Sidar, aged 36 years, son of Shri Kunjal Singh Sidar, President, Hind Mazdoor Kissan Panchayat (Raigarh District), resident of Kotra village, District Raigarh (M.P.).

(5) Goldy M. George, aged 28 years, son of Shri M.G. Babykutty, Activist and Journalist, Ekta Parishad, r/o Gandhi Bhawan, Shymala Hills, Bhopal 462 002 (M.P.).

(6) Shashikant Sharma, aged 44 years, son of Shri Ashwani Sharma, Journalist, resident of Chattatamura Naka, Raigarh, District Raigarh 496 001 (M.P.).

Versus

Respondents: (1) The State of Madhya Pradesh, through the Chief Secretary, Government of Madhya Pradesh, Mantralaya, Vallabh Bhawan, Bhopal (M.P.).

Respondents: S (2) Secretary,
Department of Water Resources,
Government of Madhya Pradesh,
Vallabh Bhawan, Bhopal M.P.

S (3) Secretary,
Department of Energy,
Government of Madhya Pradesh,
Vallabh Bhawan, Bhopal M.P.

R (4) The Chairman,
Madhya Pradesh Electricity Board,
Shakti Bhawan, Rampur, Jabalpur
District Jabalpur M.P.

S (5) Union of India,
through the Secretary,
Ministry of Water Resources,
Government of India, Shram Shakti
Bhawan, New Delhi 110 001.

(6) Central Pollution Control Board,
through its Chairman,
Parivesh Bhawan, East Arjun Nagar,
New Delhi 110 032.

R (7) M.P. Pollution Control Board,
Pariavaran Parishar, Arera Colony,
Bhopal M.P. 462 016 (M.P.).

R (8) Chief Engineer,
Hemdeo Kachhar, Department of
Water Resources, Govt. of M.P.,
Bilaspur M.P.

S (9) District Collector,
Raigarh District, M.P.

R (10) Executive Engineer,
Public Health Engineering Deptt.
Govt. of M.P., Raigarh M.P.

(11) Chairman,
Jindal Strips Limited,
Post Box No.6, Delhi Road,
Hisar, 125 005 (Haryana).

WRIT PETITION UNDER ARTS.226/227 CONSTITUTION OF INDIA

DETAILS OF WRIT PETITION

238

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
DIVISION BENCH

-CORAM : HON'BLE SHRI H.L. DATTU, CJ.
HON'BLE SHRI V.K. SHRIVASTAVA, J.

W.P. NO. 3377 OF 1998

PETITIONERS Jayant Bohidar & others

Versus

RESPONDENTS The State of Madhya Pradesh and others.

Present :

Shri Rajeev Shrivastava & Shri Alok Bakshi,, counsel for the petitioners.

Shri Prashant Mishra, Addl. Advocate General for the State/ respondents No.1,2,3,8,9 and 10.

Shri Manindra Shrivastava, Sr. Advocate with Shri Ashish Shirvastava, counsel for respondent No.11.

None for the other respondents.

ORAL ORDER
(Passed on 21st February, 2007)

The following oral order of the Court was passed by H.L. Dattu, CJ.

Public spirited citizens are before us. The main relief sought in the writ petition is to direct the respondents to stop construction of a dam on river Kelo, on the ground that if construction of the dam is completed, the villagers may not get sufficient water.

(2) This Court while entertaining the writ petition had granted an interim order dated 27.10.1999. The order passed by this Court reads as under :

139

"27.10.1999

Shri R.K. Gupta, Advocate for the petitioners.

Shri V.K. Tankha, Advocate General for the State of M.P.

Shri Ravindra Shrivastava, Adv. For the respondent No.11.

Heard learned counsel. This is a Public Interest Litigation whereby the petitioners have prayed that complete record relating to grant of permission for enhancing electricity generation capacity from 20 MW to 80 MW and relating to grant of permission for digging intake wells and for fetching water from the Kelo river for use in Captive Thermal Power Plant of the respondent No.11 Jindal Strips Limited be directed to be produced by the respondents for examination of this Court. It is also prayed that the permission so granted by the State should be quashed.

Respondent No.11 M/s. Jindal Strips Limited is a private Company which has set up an Iron Strips Manufacturing Plant. They applied for permission to increase the power generation in their plant from 20 MW to 80 MW capacity. That permission was granted by the Government after protracted correspondence and ultimately an agreement was entered into between the State of M.P. and respondent No.11 M/s. Jindal Strips Ltd. for supply of water after constructing a stop-dam on the river Kelo. One of the conditions which is relevant to mention here, is that no water shall be supplied to the respondent No.11 from February to June. The State also has reserved a right that during the period of supply of water other than June to February, it can stop supply of water, if the water is needed for drinking purposes and for irrigation purposes of the villagers.

Construction of stop dam was completed in June, 1999. The allegation of the petitioners in this Public Interest Litigation is that by construction of the stop dam under the

240

permission of the State Government, the residents/habitants of Raigarh township and villagers in the down stream will not get sufficient water for drinking and irrigation purposes. A notice of this petition was given to the respondents and reply has been filed in which large correspondence which transpired between the State and the respondent No.11 Company has been produced before us. It is emphasized by the respondents that by construction of the dam or by construction of intake well, the villagers in the down stream of the river are not going to be affected. It is submitted that the interest of the villagers down stream has been taken proper care by conducting survey and study before construction of dam and it is found that by construction of stop-dam and supply of water to M/s. Jindal Strips Limited, the villagers residing in the down stream villages will not be affected in any manner.

As a matter of fact, at present, we are handicapped to come to a conclusion as to in what way the supply of water to the respondent No.11 Company and construction of stop dam would affect the villagers in the down stream of the river. The dam in question has only been constructed in 1999. No study has been undertaken so far as to how by construction of stop dam and supply of water therefrom to the respondent No.11 will affect the villagers in the down stream for drinking water and irrigation. At present, with the material available with us, it is not possible to come to a definite conclusion in relation to its effect upon the people residing in the down stream. Therefore, proper study of the matter is required before a decision is taken to remove the stop dam constructed by the respondent No.11.

Shri V.K. Thanka, learned Advocate General and Shri Ravindra Shrivastava, learned counsel for the respondent No.11 submit, and Shri R.K. Gupta, learned counsel for the petitioners also agreed, that let datas be collected after undertaking due study and survey so that the Court is facilitated in coming to a conclusion whether the

241

construction of stop dam and supply of water to the respondent No.11 would adversely affect the interest of the villagers in the down stream or not. It would be too hazardous to come to any conclusion at this stage.

Assurance has been given by the learned Advocate General on behalf of the State that in case it is found that construction of stop dam and supply of water to the respondent No.11 therefrom is going to affect the villagers in the down stream, the State will stop supply of water to the respondent No.11 and for that the State has already reserved its right. We hope and trust that the assurance of the learned Advocate General would be faithfully followed by the State functionaries. However, we do not propose to decide the issue at this stage because we will have to wait for the detailed study to be undertaken that whether by the construction of the stop dam, the villagers in the down stream has materially affected or not. Therefore, we defer the decision in the petition at present and wait for the result of the study which may be undertaken by the petitioners and by the State in the matter. Let that matter be placed before this Court after the proper material is placed before it.

Meanwhile, it is directed that the Irrigation Department will properly control the supply of water from the stop dam and it would be the responsibility of the State to see that people of that area do not suffer on account of the stop dam. Shri Thanka, learned Advocate General has submitted that the stop dam will be supervised by the Executive Engineer of the Irrigation Department of the area concerned who will ensure that supply of the water to the people in the down stream is not adversely affected. We accept the undertaking and direct that proper study should be undertaken from the month of February onwards because during that time, it will be dry season and it will be helpful for us to assess the situation. Both the parties should submit detailed reports of the conditions of the villagers down stream during this time.

This petition be listed in the month of July, 2000

Certified copy of the order be supplied to the parties as per rules.

Sd/
Chief Justice
27.10.1999

Sd/
Judge
27.10.1999"

(3) The Court also had directed the respondents to file proper report.

(4) The respondents have filed their returns as well as the report before this Court. In the report it is stated that by constructing dam on river Kelo, it will not affect the interest of the villagers and even after construction of the dam, the villagers will be in a position to get sufficient supply of water.

(5) We have carefully perused the pleadings of the petitioners as well as the returns and report filed by the respondents.

(6) The interim order passed by this Court is still operating against the respondents. In our opinion, if the interim order is continued, the villagers who are the petitioners before us will have proper supply of water and the respondents will not be prejudicied in any manner whatsoever. For this arrangement parties and their learned counsels have no objection.

(7) In view of the above, taking into consideration the returns and the report of the respondents, this writ petition is disposed of. We make it clear that the interim order passed by this Court will continue to operate against the respondents even after disposal of this writ petition.

(8) Ordered accordingly.

Sd/-
Chief Justice

Sd/-
V.K. Shrivastava
Judge